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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of)
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NICK E. CIAVARELLA, *et al.*)
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Serial No. 10/693,534)
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Filed: October 25, 2003)
)
For: UNIVERSAL ADAPTER CLIP)

CERTIFICATE OF MAILING

I hereby certify that thiscorrespondence was deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 21, 2006

Martha L. Hastings

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Sec'y. to Shannon V. McCue, Reg. No. 42,859

TRANSMITTAL SHEET

Enclosed are the following documents:

Appeal Brief (with Certificate of Mailing)
Claims Appendix
Return Postcard

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 18-0987.

Respectfully submitted,

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Mail Stop Appeal Brief Patents
Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This is an Appeal to the Board of Patent Appeals from the final decision dated February 9, 2006, of the primary Examiner finally rejecting claims 1, 3, and 6-14. A Notice of Appeal was filed on April 25, 2006.

I. Real Party in Interest

The above-identified application was filed on October 25, 2003, and assigned Serial No. 10/693,534, naming Nick E. Ciavarella, Mark E. Rosenkranz, Martin O'Toole, and Detlev Franz Smith as inventors. Their rights were assigned to Joseph S. Kanfer. The Assignment was recorded by the United States Patent and Trademark Office at Reel/Frame 014716/0687.

II. Related Appeals and Interferences

None.

III. Status of Claims

The application was originally filed with 14 claims. In the first Office Action, claims 1, 3, and 6-14 were rejected. The Examiner indicated that claims 2, 4, 5, and 8 contained allowable subject matter but were objected to as being dependent upon a

rejected base claim. In the first response, the Applicants made one amendment correcting an error in claim 8. After the Applicants' response, the Examiner issued a final Office Action rejecting claims 1, 3, and 6-14 on the same grounds stated in the first Office Action. Claims 2 and 4-5 were again indicated as containing allowable subject matter but objected to as being dependent upon a rejected base claim. The claims to be reviewed on appeal are claims 1, 3, and 6-14.

IV. Status of the Amendments

Claim 8 was amended to correct an inconsistency in the reference to a flange. Also, the specification and drawings were amended to address objections made by the Examiner. These amendments have been entered.

V. Summary of the Invention

The present invention relates to a universal adapter clip that may be attached to a container used in a dispenser having a keying system, where the universal adapter clip secures the container within the dispenser while bypassing the keying system (spec. pg. 7, lines 25-30).

The universal adapter clip was developed because existing dispensers often include a receiver that includes a key-plate having a recessed keyway formed therein that mates with a projecting key formed on the container or a collar attached to the container. In this way, a unique fit is established between the container and the dispenser (spec. pg. 1, ¶ 3- pg. 2, ¶ 1).

While these systems offer advantages in that the proper container will be associated with the appropriate dispenser, due to the proliferation of different dispensers, some consumers would prefer to simplify the stocking of replacement containers by purchasing a container that may be used universally with all of the various dispensers, irrespective of any keying system associated with those dispensers (spec. pg. 2, ¶ 2).

With that in mind, the invention, as claimed in claim 1, provides a universal adapter clip comprising a hollow body that is attachable to the container with a flange extending radially outward from the body and at least one tab extending rearwardly

from the body, axially spaced from the flange to receive the key-plate therebetween when the container is inserted within the dispenser (spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5). By capturing the key-plate between the flange and the tab, the container is secured within the dispenser in terms of axial movement (spec. pg. 6, lines 25—pg. 7, line 2). Claim 3 depends from claim 1 and adds the limitation that the flange include a downwardly extending rim that contacts the top surface of the key-plate (spec. pg. 6, lines 18-22).

Claim 6 depends from claim 1 and adds the limitation that the hollow body is semi-circular and opens rearwardly towards the dispenser (spec. pg. 7, lines 7-13 and Figs. 4-5).

Claim 7 depends from claim 1 and adds the limitation that the body is opened at either axial end so that a portion of the container may be received therethrough (spec. pg. 5, line 29—pg. 6, line 4, Figs. 3-5).

Claim 8 depends from claim 7 and adds the limitation that the top flange include a radially inward extending portion that is adapted to grasp a projecting surface on the container (spec. pg. 6, lines 6-9, Fig. 4).

Claim 9 depends from claim 1 and adds the limitation that the universal adapter clip defines a notch adapted to receive a locating projection on the container (spec. pg. 7, lines 20-24, Fig. 3).

Claim 10 depends from claim 1 and includes the limitation that the universal adapter clip include a hold formed on the hollow body (spec. pg. 7, lines 13-20 and Fig. 3).

Claim 11 depends from claim 10 and adds the limitation that the hold include a pair of vertically extending ribs extending forwardly from the body opposite the key-plate (spec. pg 7, lines 13-20 and Fig. 3).

Claim 12 is an independent claim to a universal adapter clip including a pair of tabs that extend rearwardly from a body that is attachable to the container and a rim formed on a top portion of the body extending over a portion of the receiver within the dispenser so that the receiver is at least partially received between the rim and the tabs to secure the container within the dispenser (spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5).

Claim 13 is an independent claim directed to a universal adapter clip for securing a container within a soap dispenser that has a key-plate, where the universal adapter clip comprises a semi-circular body that opens on a rearward side to receive a portion of the container and has an annular base defining an opening through which the nozzle of the dispenser extends, a pair of tabs extending rearward from the base and being stepped downward to extend beneath the key-plate while a top flange formed at an upper edge of the body extends radially inward to support said body and a portion of the container and extends radially outward to fit over the key-plate so that the key-plate is secured between the top flange and the tabs (spec. pg. 5, line 27—pg. 7, line 2, Figs. 2-5).

Claim 14 depends from claim 13 and adds the limitation of a rim extending downward from the top flange to contact the top surface of the key-plate (spec pg. 6, lines 18-22).

These claims are distinguished from the prior art in that no such adapter clip is disclosed.

VI. Grounds of Rejection to be Reviewed on Appeal

Independent claims 1, 12, and 13 all include the limitation that the universal adapter clip includes a hollow body that attaches to a container and has a flange and tabs axially spaced from each other so that they capture the key plate therebetween to secure the container, irrespective of any keying system on the key-plate.

The Examiner rejected claims 1, 3, and 6-14 as anticipated by U.S. Patent No. 6,607,103 to Gerenraich, et al. The Examiner argues that Gerenraich shows a dispenser, as seen in Figs. 5 and 6, having a clip seen in Fig. 6 used in connection with a soap container 22 and having a key-plate 44, a semi-circular hollow body 88, a flange 80 extending radially outward, a tab 126 extending rearward, and vertical ribs, as seen in Fig. 10, a rim extending downwardly, as seen in Fig. 7, a locating notch 82, and holding elements 84 and 92.

Following the final Office Action, the Applicants contacted the Examiner to gain a better understanding of the Examiner's rejection. The Examiner explained that he believes that the parts referred to separately in the Figures are assembled in Figs. 7

and 8 to anticipate claim 1. The Applicants respectfully disagree with the Examiner's position because the universal adapter clip is claimed as a hollow body that attaches to a container having a flange and tab that extend from it, without any required assembly, capable of securing a container within a keyed dispenser while bypassing the keying system.

VII. Argument

A. Since Gerenraich does not disclose the claimed arrangement of elements, it does not anticipate claims 1, 3, and 6-14.

To anticipate, a reference must have elements arranged as required by the claim. MPEP § 2131, *citing, In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). Gerenraich does not disclose a hollow body that attaches to a container having an axially spaced flange and tab extending from it, as claimed in claims 1,3, and 6-14.

The Examiner argues that Gerenraich shows:

> a dispenser as seen in Figs. 5 and 6, having a clip seen in Fig. 6 used in connection with a soap container 22 and having a key-plate 44, a semi-circular hollow body 88, a flange 80 extending radially outward, a tab 126 extending rearward and vertical ribs as seen in Fig. 10, a rim extending downwardly as seen in Figs. 7 and locating notch 82, holding elements 84 and 92.

The Applicant respectfully disagrees because the flange 80 and tab 126, referenced by the Examiner, do not extend from a hollow body that attaches to Gerenraich's container. The Examiner's rejection relies on an assembly of parts found on separate structures within the Gerenraich patent but not related in the manner claimed by the Applicants. In particular, flange 80 is located on the support frame of the dispenser, while tab 126 is attached to the container. The swing arm 88, which the Examiner contends is a hollow body, is not attachable to the container, as claimed, but instead is pivotally mounted on the support frame. Since Gerenraich does not disclose a hollow body that attaches to a container, and has a flange and a tab extending from it, Gerenraich does not anticipate the claimed invention. Similarly, Gerenraich does not teach the spacing of the tab and flange on the hollow body to receive a keyplate therebetween.

Similarly, independent claim 12 claims an adapter clip having a rim that extends over a portion of a receiver and a pair of tabs that extend rearwardly from the body of the clip and are insertable beneath the receiver to capture the receiver therebetween. Again, in this way, the claimed universal adapter clip avoids any keying system formed on the receiver, yet secures the container against unwanted axial movement ordinarily prevented by the keying system. Again, Gerenraich does not disclose such a rim and tabs and does not contemplate the avoidance of such a keying system.

Independent claim 13 is also allowable for the same reasons because claim 13 claims a top flange having a radially extending portion that fits over the key-plate and tabs that extend beneath the key-plate to capture it therebetween. Also, claim 13 defines the separate allowable feature of the top flange having an inwardly extending portion that engages the container to support the clip on the container. Also claim 13 claims the clip as having a semi-circular body that opens on a rearward side, which prevents the adapter clip from interfering with the insertion of the container within certain dispensers. This feature is not disclosed in Gerenraich.

Dependent claims 6-11, which depend from claim 1, and claim 14, which depends from claim 13, should be allowable based on their dependency, but those claims are independently allowable, as well. For example, claim 6 includes the feature that the hollow body is semi-circular and opens rearwardly relative to the dispenser. As discussed with respect to claim 13 above, this feature is not disclosed by Gerenraich. Claim 7 discloses the feature that the hollow body is open at either end to allow a portion of the container to extend therethrough in attaching the hollow body to the container. Claim 8 adds the feature that the flange include a radially inward extending portion that grasps a projecting surface on the container. As mentioned above, Gerenraich's flange is not found on the hollow body and further does not show an inward extending portion. Claim 9 depends from claim 1 and adds a notch to the clip that is adapted to receive a locating projection on the container. Gerenraich does not show such a notch nor does it show a projection on its container that would be received in such a notch. The collar in Gerenraich simply threads onto the container. Claim 10 depends from claim 1, and adds a hold formed on the hollow body. Claim

11 depends from claim 10, and further specifies that the hold includes a pair of vertically extending ribs. Gerenraich does not show a hold or vertically extending ribs. Dependent claim 3, which depends from claim 1, and dependent claim 14, which depends from claim 13, each add a rim that extends downwardly from the top flange and is adapted to engage a top surface of the key-plate. The Examiner refers to Figs. 7 and 8 of Gerenraich, but no rim extending downwardly from a flange that extends from the hollow body is shown. Consequently, the Applicants respectfully disagree with the Examiner's assertion that the features found in dependent claims 3, 6-11 and 14 are anticipated by Gerenraich.

Since the claimed elements are not shown in Gerenraich or, at the least, are not arranged in the manner described in the claims, under MPEP § 2131, Gerenraich does not anticipate claims 1, 3, and 6-14.

B. Moreover, Gerenraich does not enable one skilled in the art to practice the claimed invention.

"For a publication to constitute an anticipation of an invention . . . it must be capable, when taken in conjunction with the knowledge of those skilled in the art to which it pertains of placing that invention in the possession of the public." *In re Donohue*, 632 F.2d 123 (C.C.P.A. 1980). Gerenraich differs significantly from the claimed invention in that keying is intended, and, thus, Gerenraich does not enable the bypassing of a keying system as claimed. In the claimed invention, the flange and tab that extend from the hollow body are spaced axially to receive an axially extending keyplate therebetween. In this way, the flange and tab limit axial movement of the container by extending above and below the keyplate, while bypassing any keying system formed in its face. Gerenraich does not disclose this arrangement of the claimed elements, and is not enabling because, in Gerenraich, keying is intended.

In particular, the flange 80, to which the Examiner refers, is not carried on the container but forms part of the dispenser base and acts as a horizontally extending frame and key-plate. As described in detail in column 3, lines 38-61, the frame 80 includes an opening through which a nozzle of the pump assembly extends, causing the bottle assembly 22 to be supported on the frame 80 by upwardly extending posts 84 extending therefrom. A depression is formed in the surface of frame 80 to receive

alternate styles of flanges to enable coupling in a unique and keyed manner with various bottle assemblies 22. Thus, it can be seen from Gerenraich that it does not contemplate an axially extending key-plate having a keyway formed in its axially extending surface, but relies on a horizontally extending key-plate with depressions that capture a flange in a designated radial position. As best shown in Fig. 5, Gerenraich's flange 74 is designed to rest within depression 82 (Fig. 6). This system contrasts with systems using an axially extending key-plate in that the key-plate does not restrict axial movement of the bottle.

The Examiner also argues that Gerenraich includes a semi-circular hollow body 88. This component is a snap arm mounted on frame 80 and does not form any part of the clip. As described in column 3, lines 54-61 of Gerenraich, a snap arm 88 is provided to resist upward acting actuation forces that might dislodge the bottle from the frame. In contrast, the Applicant's invention includes a hollow body that attaches to the container and has a flange and tab extending therefrom. The flange and tabs are spaced on the hollow body so that the key-plate is received between them, and are designed to bypass the keying system on the key-plate. As claimed, the Applicant's invention includes a flange having a radially extending portion that extends above the axially extending key-plate and a tab that extends beneath the axially extending key-plate to secure the container against the upward acting forces of the pump. Ordinarily, a key projecting from the container's pump collar would fit within the keyway formed in the axially extending key-plate to perform this function. By providing a flange and tab capable of capturing the entire key-plate therebetween, the Applicant's adapter clip allows a container to be secured against the upward acting forces of the pump's actuation without a key and bypasses the keying system formed by the axially extending key-plate. To that end, the claimed adapter clip includes a hollow body that fits onto the container having an axially spaced flange and tab that capture the key-plate as described. Consequently, even if the snap arm 88 was considered to be a hollow body, Gerenraich does not enable one skilled in the art to practice the claimed invention because the extension of the tab and flange from this body to receive a keyplate therebetween and bypass the dispenser's keying system is

not disclosed. Without an enabling disclosure, Gerenraich does not anticipate claims 1, 3, and 6-14.

In conclusion, since Gerenraich does not disclose a hollow body having an axially spaced flange and tabs adapted to bypass keying systems having an axially extending key-plate, the Applicant respectfully requests reconsideration of the foregoing rejections and entry of a notice of allowance for claims 1-14.

VIII. Claims Appendix

Attached.

IX. Evidence Appendix

N/A

Respectfully submitted,

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CLAIMS APPENDIX

1. (Original) A universal adapter clip used in connection with a container that is received within a soap dispenser having a key-plate, the clip comprising:
   a) a hollow body attachable to the container;
   b) a flange extending radially outward from said body; and
   c) a tab extending rearwardly from said body and axially spaced from said flange to receive the key-plate therebetween upon insertion of the container within the dispenser.

2. (Original) The universal adapter clip of Claim 1, wherein said flange is located at an upper vertical extremity of said body and said tab is located at a lower vertical extremity of said body.

3. (Original) The universal adapter clip of Claim 1 further comprising a rim extending downwardly from a radial outer extremity of said flange, wherein said rim is adapted to contact a top surface of the key-plate.

4. (Original) The universal adapter clip of Claim 3, wherein said tab includes a first portion extending rearward from said body and a second portion extending rearward from said first portion and stepped downward relative to said first portion.

5. (Original) The universal adapter clip of Claim 4, wherein said first portion and said second portion form a vertically extending shoulder adapted to engage the key-plate upon insertion.

6. (Original) The universal adapter clip of Claim 1, wherein said body is semi-circular and opens rearwardly relative to the dispenser.

7. (Original) The universal adapter clip of Claim 1, wherein said body is opened at either axial end and adapted to receive a portion of the container therethrough.

8. (Previously Presented) The universal adapter clip of Claim 7, wherein said flange includes a radially inward extending portion adapted to grasp a projecting surface on the container.

9. (Original) A universal adapter clip of Claim 1 that defines a notch adapted to receive a locating projection on the container.

10. (Original) The universal adapter clip of Claim 1 further comprising a hold formed on said body.

11. (Original) The universal adapter of Claim 10, wherein said hold includes a pair of vertically extending ribs extending forwardly from said body opposite the key-plate.

12. (Original) A universal adapter clip for securing a container within a soap dispenser, where the dispenser has a receiver, the universal adapter clip comprising a body attachable to the container; a pair of tabs extending rearwardly from said body, said tabs being insertable beneath the receiver; a rim formed on a top portion of said body said rim extending over at least a portion of the receiver, wherein the receiver is at least partially received between said rim and said tabs.

13. (Original) A universal adapter clip for securing a container within a soap dispenser, where the dispenser has a key-plate, the universal adapter clip comprising a semi-circular body open on a rearward side to receive a portion of the container; an annular base defining an opening through which a nozzle of the dispenser extends; a pair of tabs extending rearward from said bottom flange, wherein each end of said tabs steps downward from said bottom flange to extend beneath the key-plate upon

insertion; a top flange formed at an upper edge of said body extending radially inward to support said body on a portion of the container and extending radially outward to form a radially outward extending portion adapted to fit over the key-plate, wherein said radially outward extending portion and said end of said tabs are axially spaced to receive the key-plate therebetween.

14. (Original) The universal adapter clip of Claim 13 further comprising a rim extending downward from said top flange, wherein said rim is adapted to engage a top surface of said key-plate.